IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.354 OF 1991

The State of Maharashtra ...Appellant.

V/s

Babasaheb Ghanshyam Kamble,
r/o Police Line, Barshi,
Tal. Barshi, Dist : Solapur. ...Respondent.

Shri A.M. Shringarpure for the appellant.

None for the respondent.

CORAM: V.M.KANADE,J.
DATE: 30th November, 2004

ORAL JUDGMENT:

1. Heard the learned APP for the appellant - State.

None appears for the respondent, though served.

2. The State has challenged the judgment and order passed by the Judicial Magistrate, First class, Mohol, Solapur in S.T.C. No.287 of 1988. By the said Judgment and Order dated 16/02/1991, the learned Magistrate acquitted the accused of the offence punishable under section 66(1)(b) and 85(1) of the Bombay Prohibition Act, 1949.

3. Prosecution's case in the trial court was that the accused who was working in the Police Department had entered the cabin of his superior Officer after having

consumed liquor and behaved in disorderly manner. The accused was deputed for bandobust duty at Solapur on 02/04/1988. He did not report back in the afternoon. The accused was under an apprehension that his superior Officer would not allow him to join his duties and, therefore, he entered his cabin after having consumed alcohol and questioned him in an arrogant manner and told him that he would see what action the police could take against him. A panchanama was made. The accused was taken to Medical Officer, Primary Health Centre, Mohol and the medical certificate was obtained which showed that the blood sample which was taken from the accused contained 0.85% w/v ethyl alcohol. A complaint was lodged and Charge Sheet was filed.

4. One of the essential requirements of the offence under section 66(1)(b) is that the blood sample which is taken from the accused could be taken in accordance with the provisions of Rule 4 and non-compliance of the said Rule is fatal to the prosecution case. From the perusal of the evidence of P.W. 7 - Dr. Chilgunde, it can be seen that there was no compliance of provisions of Rule 4. This Court has taken a consistent view that non-compliance of Rule 4 is fatal to the prosecution. There is also delay in filing the

complaint which is not explained by the prosecution. Further, the evidence of P.W.2 - Bharat Shinde, P.W. 3 - Manohar Salgar, P.W. 4 - Tatya Mali, P.W. 5 - Dinkar, P.W.6 - Hari Mali also cannot be of any assistance to the prosecution as, admittedly, they were not in the room when the said incident in question took place. The panchanama also is not proved by the independent witnesses as one panch has turned hostile and the other has not been examined by the prosecution.

5. The Trial Court, therefore, has, in my view, correctly assessed the evidence and has come to the conclusion that the prosecution has not proved the case against the accused beyond the reasonable doubt. There is no reason to interfere with the said finding.

Appeal is accordingly dismissed.

V.M. KANADE, J.